

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS

_____	)	
STEVEN R. KINCAID,	)	
	)	
Plaintiff,	)	04 CV 11522 (WGY)
	)	
vs.	)	
	)	
BANK OF AMERICA CORPORATION,	)	
	)	
Defendant.	)	
_____	)	

**FEDERAL RULE OF CIVIL PROCEDURE 26(f) PROPOSED DISCOVERY PLAN**

1. Pursuant to Federal Rule of Civil Procedure 26(f), a meeting was held on November 11, 2004 electronically and by telephone among:

John Harkavy, Esq. and Deborah Martin Norcross, Esq. for Plaintiff, and

George P. Kostakos, Esq. for Defendant

2. **Pre-discovery Disclosures.** The parties will exchange by November 30, 2004, the information required by Fed. R. Civ. P. 26(a)(1) and (2).

3. **Discovery Plan.** The parties jointly propose to the court the following discovery plan:

- a. Discovery will be needed on the following subjects: any and all matters relevant to any claim or defense asserted or to be asserted.
- b. All discovery commenced in time to be completed by July 2, 2005.
- c. The parties agree to a maximum of twenty-five (25) interrogatories, including all subparts described in Local Rule 26(1)(c), by each party to any other party. The responses to interrogatories shall be due thirty (30) days after service.
- d. The parties agree to a maximum of twenty-five (25) requests for admission by each party to any other party. The responses to requests for admission shall be due 30 days after service.

- e. Plaintiff will need, and requests permission to take, 12 depositions (nine witnesses identified in the affidavits filed by Defendant in connection with its motion to transfer, which was denied, and three non-parties identified in the affidavit of Steven Kincaid dated September 25, 2004 filed in opposition to said motion). Defendant has consented to that request, and does not need to exceed the maximum of 10 depositions.
- f. Each deposition shall be limited to a maximum of seven (7) hours per day unless extended by agreement of the parties.
- g. Reports from retained experts under Rule 26(a)(2) are due from plaintiff by July 15, 2005 and from defendant by August 1, 2005.
- h. Supplementations under Rule 26(e) due within thirty (30) days of identification of the need to supplement.
- i. All discovery requests shall be served electronically in addition to any other method selected by the serving party.

4. **Other Items.**

- a. The parties do not request a conference with the court before entry of the scheduling order.
- b. The parties request a pretrial conference approximately three weeks before the trial date in this action.
- c. All potentially dispositive motions should be filed by August 2, 2005.
- d. Settlement cannot be evaluated prior to the parties conducting preliminary discovery and may be enhanced by the use of the following alternative dispute resolution: Mediated Settlement Conference after a ruling on any dispositive motions.
- e. Final lists of witnesses and exhibits under Rule 26(a)(3) are due:
  - 1) from Plaintiff three weeks before trial
  - 2) from Defendant three weeks before trial

If this case is ultimately tried, trial is expected to take approximately four days.

This case does not need early judicial intervention due to its complexity or other factors.

The Plaintiff has requested trial by jury on all issues of fact.

This the 16<sup>th</sup> day of November 2004.

Respectfully Submitted,

/s/ George P. Kostakos  
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**ATTORNEYS FOR PLAINTIFF  
STEVEN R. KINCAID**